

ROBERT TAYLOR, OSB #044287
City Attorney
Email: Robert.Taylor@portlandoregon.gov
HEIDI BROWN, OSB #922410
Chief Deputy City Attorney
Email: Heidi.Brown@portlandoregon.gov
SARAH C. AMES, OSB #163350
Deputy City Attorney
Email: Sarah.Ames@portlandoregon.gov
SREEVAMSHI C. REDDY, OSB #140560
Deputy City Attorney
Email: Vamshi.Reddy@portlandoregon.gov
Office of City Attorney
1221 SW Fourth Avenue, Suite 430
Portland, OR 97204
Telephone: (503) 823-4047
Facsimile: (503) 823-3089
Of Attorneys for Defendant City of Portland

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

PLAINTIFF,

v.

**DEFENDANT CITY OF PORTLAND'S
RESPONSE TO DOJ'S SIXTH PERIODIC
COMPLIANCE ASSESSMENT REPORT**

CITY OF PORTLAND,

DEFENDANT.

The City of Portland (City) is committed to achieving substantial compliance, delivering enduring police reform, and returning oversight and direction of our local police agency to our local community and its elected leaders, and the City agrees with the United States Department of Justice's (DOJ) assessment that the Parties have "considerable cause for optimism going forward." DOJ rated the City's efforts on almost two-thirds of the Settlement Agreement's provisions as meeting the highest "substantial compliance" standard – a demonstration of "hard work and consistent performance over time." Indeed, the PPB force policies, training delivery,

crisis intervention, and accountability systems have made important progress over the period of the Agreement, and the City has proactively implemented durable remedies.

Portland's elected officials and community stakeholders are, together, pursuing innovative, proactive, and comprehensive reforms to improve policing, over and above the requirements of the Settlement Agreement. The City's efforts are noted by the DOJ in its Compliance Assessment Report:

- ***ABLE Training.*** All sworn PPB members completed an eight-hour training in Active Bystandership for Law Enforcement (ABLE) during 37 training sessions throughout the Fall of 2021.¹ ABLE's national lead training instructor, responsible for more than 180 agencies in 38 states that have adopted ABLE, stated the following after observing PPB's training: "What you just experienced and participated in was exactly what ABLE hopes is happening everywhere. [. . .] I know you may not feel this sometimes, but based on what I observed today, the Portland Police Bureau can be proud. Not only are you doing the difficult work to solve and improve upon matters that may or may not be within your control, but you are doing it with integrity, honesty, and a shared commitment to changing the culture (real or perceived) of the profession we all love."
- ***Community Oversight Board.*** In November 2020, Portland voters approved the formation of a new, independent community police oversight board to conduct investigations of PPB members and impose appropriate discipline. The Police Accountability Commission, with 20 community volunteer members, is in the process of developing rules and procedures for this new police oversight system, and is anticipated to be presented to the City Council in mid-2023.
- ***Portland Street Response Expansion.*** Portland Street Response (PSR), a Portland Fire & Rescue program, dispatches teams of mental health clinicians and emergency

¹ Additional information about The Able Project may be found at the following web site: <https://www.law.georgetown.edu/cics/able/about-us/> (last visited July 14, 2022).

responders to non-emergency calls involving persons experiencing homelessness, a mental health crisis, or intoxication.² Following positive six-month and first-year evaluations of PSR by researchers at the Homelessness Research & Action Collaborative (HRAC) at Portland State University (PSU),³ the City Council expanded PSR's service area citywide and significantly increased PSR's hours of operation. The City continues to hire PSR responders to support the program. PSU HRAC researchers noted the following in their evaluation: "Portland Street Response has come so far in a very short amount of time – from a small pilot program in one neighborhood to a citywide movement that has fundamentally changed Portland's first response system. Portland Street Response provides a model for the nation to follow, and we look forward to continuing to monitor its progress and impact as it expands citywide."

- ***Public Safety Support Specialist (PS3) Program Expansion.*** The PS3 Program was created by the City to enhance community engagement opportunities and reduce the number of armed police officers responding to lower priority calls for service.⁴ With PS3s taking over the low priority calls, officers are freed up to respond to 911 calls. The City Council recently committed \$1.8 million to fund 22 new PS3 positions.
- ***Collective Bargaining Agreement with the Portland Police Association (PPA).*** With unprecedented involvement by, and support from, the City's elected officials and significant community input, the City reached a new four-year agreement with the PPA, including a new Corrective Action Guide that, as the DOJ notes, will "ensure more transparent and consistent accountability for misconduct." The Corrective Action Guide centers accountability, clarity, consistency, correct behavior, improved

² Additional information about PSR may be found at <https://www.portland.gov/streetresponse>.

³ PSU HRAC's report, published in April 2022, as well as the City's response, are available at <https://www.portland.gov/streetresponse/portland-state-evaluation>.

⁴ Additional information about the PS3 Program is available at <https://www.portland.gov/police/divisions/ps3s>.

trust with community, and improved trust for employees and employer.

These efforts demonstrate an ongoing commitment on the part of the City's elected officials, Police Bureau leadership and members, and community stakeholders to the shared mission of improving policing in Portland. One officer's story during this compliance period serves as just one example of this important effort: On March 17, 2022, Officer Kristen Schmidt, a member of PPB's Enhanced Crisis Intervention Team, was awarded the U.S. DOJ's Fifth Annual Attorney General's Award for Distinguished Service in Community Policing. Officer Schmidt provided help and support to a community member in the midst of a mental health crisis, calming her, personally taking her to the hospital, staying in touch, and picking her up from the hospital when she was released. One year later, the community member reconnected with Officer Schmidt to express her gratitude. As the DOJ's announcement notes, the community member "believes that Schmidt is a powerful role model for sensitive and compassionate police work for people in vulnerable situations."⁵

A. Impacts of 2020 Are Being Addressed by the Remedies of Section XI.

The City achieved substantial compliance with the DOJ Settlement Agreement in 2019 and was entering a monitoring year in 2020. However, 2020 presented significant challenges for the City. In 2021, the City negotiated a slate of remedies with DOJ, PPA, and the amici to remedy the issues that arose in 2020. As discussed at the Fairness Hearing on April 29, 2022, the Parties agree that the negotiated remedies are fair, adequate, and reasonable.

In addition, in 2021, the City continued to take further steps to address the concerns

⁵ U.S. Department of Justice, *Justice Department Honors Fifth Annual Attorney General's Award for Distinguished Service in Community Policing* (Mar. 17, 2022), available at <https://www.justice.gov/opa/pr/justice-department-honors-fifth-annual-attorney-general-s-award-distinguished-service>.

related to 2020. Both the Office of Independent Police Review (IPR) and PPB's Internal Affairs Division investigated more than 150 individual complaints against PPB members related to the protests – some of which are still making their way through the disciplinary system. Throughout 2021, the Bureau conducted comprehensive training on crowd management, including the legal standards for use of force in protest settings and emerging developments in state law and jurisprudence related to crowd management. The Bureau also began the task of revising its force policies to reflect the changing legal landscape and to more clearly set forth the City's standards. These new force policies are currently in the final stages of review and will be adopted this summer.

As DOJ notes, the Section XI remedies address many of the concerns raised in its Sixth Compliance Assessment Report. In particular, the City has moved forward on the following over the past several months:

- **Revisions to the Force Data Collection Report (FDCR) and After Action Report (AAR) Forms (§ 188).** The City has updated the forms with new drop-down menus providing the required functionality and is moving forward with full implementation of Microsoft Office365 in the coming months.
- **2020 Critical Assessment (§ 189).** Independent Monitor, LLC (IMLLC), the consulting firm engaged to complete the 2020 critical assessment, completed its first site visit to Portland in June 2022, interviewing more than 20 Bureau members and visiting several key locations. There was an extensive document production by the City in advance of IMLLC's initial site visit, as well as several supplemental document productions. IMLLC will be issuing a second document request shortly, and is planning another site visit in Fall 2022 to solicit community

input. IMLLC's initial draft report is expected to be published in January 2023.

The City will have 60 days to respond to IMLLC's draft report, as well as provide a Training Needs Assessment based on the report.

- **Civilian Education Director (“Dean of Training”) for PPB’s Training Division** (§ 191). The City went through the recruitment process for PPB’s “Dean of Training.” Unfortunately, the City will have to start the process over again and is committed to restarting it as quickly as possible. In addition to the Dean recruitment, the Bureau posted for an Instruction and Curriculum Design Specialist to support the Training Dean and the Captain of the Training Division.⁶
- **Independent Police Review Investigations of Supervisory Personnel** (§ 192). IPR is developing the scope and design of its review pursuant to Paragraph 192, has initiated multiple investigations, and is scheduling witness interviews. IPR leadership and investigators plan to consult periodically with DOJ as the investigations progress.
- **Body-Worn Cameras (BWC)** (§ 194). Mediation bargaining with the PPA continues on a BWC policy – a further session is scheduled for July 20, 2022, and the City will provide the Court with its best information on timelines at the July 27, 2022, status conference. The City has selected Axon, a leader in BWC programs for DOJ consent decree jurisdictions, as the vendor for PPB’s BWC program, and once a BWC policy is adopted will proceed with a pilot program.
- **Establishment of Community Police Oversight Board** (§ 195). The City

⁶ The posting is available at <https://www.governmentjobs.com/careers/portlandor/jobs/3617911/instruction-and-curriculum-design-specialist-analyst-ii-limited-duration>, and closes on July 25, 2022.

Council has created a separate Office of Independent Police Review, now outside of the Auditor's office, to continue independent investigations of misconduct allegations. The Police Accountability Commission, a group of 20 City Council-appointed community members, continues its fact-finding phase of work to develop a new investigatory, disciplinary, and oversight system for the Bureau. The additional requirements of Paragraphs 190 (budgeting overtime costs for training) and 193 (Annual Reports and precinct meetings) either have been fully met this year or will be shortly.

B. The City has made important progress, with more work ahead.

The City agrees with DOJ that the Bureau has made progress, with more to do.

Force (Section III): The City agrees with DOJ that PPB's adoption of revised force policies, planned for this August, and the new Section XI remedies will address many of DOJ's concerns. The City looks forward to IMLLC's initial report of findings pursuant to Section XI, Paragraph 189. The PPB Force Inspector, the Compliance Officer/Community Liaison (COCL), and the Mental Health Alliance (MHA) have called attention to the issue of the use of force against individuals in or perceived to be in mental health crisis. Reducing such encounters is at the core of the City's commitment to the people of Portland, the Court, the DOJ, and the amici. PPB has conducted an analysis and is reviewing the results to evaluate the factors and variables that may contribute to the use of force against individuals in or perceived to be in mental health crisis.

Training (Section IV): DOJ acknowledges the important milestones achieved within PPB's Training Division in the course of this compliance period, as discussed above, and for example: "In this compliance period, PPB's training achieved two new significant positive developments: (1) Active Bystandership for Law Enforcement (ABLE) Training[,] and (2) the

City's allocation of funds to create a civilian training dean position." Additionally, in 2021, members received comprehensive crowd management training to comport with a changing legal landscape and address concerns stemming from 2020.

Community-Based Mental Health Services (Section V): The City remains in substantial compliance with this section, as it has been since 2016, including with the specific dispatching requirements (Par. 90). As noted above, Portland and the nation face a continuing mental health crisis that the City has met with innovative new programs not required by the Settlement Agreement, including Portland Street Response.

Crisis Intervention (Section VI): The City has been in substantial compliance with this provision of the Settlement Agreement for the past five years, since 2017. Relying on those previous assessments, the City continued its consistent, ongoing efforts over the past compliance period to maintain its substantial compliance status. In the current Compliance Assessment Report, however, DOJ found the City only in "partial compliance." This new rating seems to be based on DOJ's desire to see the City undertake efforts not previously understood to be required under the terms of the Settlement Agreement.⁷ These different expectations present an opportunity for the Parties to work collaboratively to gain greater clarity on the Parties' mutual expectations under the Settlement Agreement, and the City looks forward to working with our DOJ partners to clarify those expectations in order to achieve substantial compliance in the next compliance period.

⁷ One such expectation involves the Behavioral Health Unit Advisory Committee. The BHUAC analyzes and recommends appropriate changes to policies, procedures, and training regarding police contact with persons who may be, or may be perceived to be, in mental health crisis, with the goal of de-escalation and decreasing the potential for violent encounters. The DOJ now would like the BHUAC to review violent encounters themselves to help meet that goal, which is not something that was previously required.

Employee Information System (EIS) (Section VII): The City believes it continues to be in substantial compliance with the five paragraphs of Section VII, as it has been since 2017. The DOJ disagrees with that conclusion, and the City is committed to resolving these issues to address DOJ's concerns, even with the City's perspective that it is meeting the terms of the Settlement Agreement. For example, while there have been some delays impacting EIS, the City has addressed these issues or is in the process of doing so. Moreover, the City is consulting with COCL on the scope and design of the EIS system analysis suggested by DOJ, even though that type of analysis has not previously been understood as a requirement under the Settlement Agreement.

Community Engagement and Creation of the Portland Committee on Community-Engaged Policing (Section IX). The City has made important progress with respect to Section IX's community engagement provisions. The Bureau published its 2021 Annual Report and held the first of three precinct meetings at East Precinct on July 13, 2022. Meetings with Central and North Precincts are scheduled for July 20 and 21, 2022, respectively, followed by a City Council presentation of the Annual Report, at which public comments will be taken. As to the requirements related to the PCCEP, two additional PCCEP members are scheduled for Council appointment on July 27, 2022, bringing the total number of active PCCEP members to ten, including one youth member. The full complement of 13 members will be appointed by the City Council by September 2022. An updated PCCEP plan was developed in consultation with the PPA and amici. Once reviewed and approved by DOJ, the PCCEP Plan and a codification of PCCEP will be presented to City Council. Finally, two staff members have recently been hired to help facilitate PCCEP's work and mission – a project manager for PCCEP, and administrative staff, both of whom work in the Community Safety Division and who will support several

community boards, including PCCEP.

C. Opportunities for Collaboration and Clarification between the Parties.

The City appreciates DOJ's Compliance Assessment Report and plans to meet with DOJ to review the detailed Report. That review of the Report will provide opportunities for the Parties to address factual concerns, clarify their mutual understanding of the requirements of the Settlement Agreement, and reconcile their different perspectives. The City is optimistic that the Parties can work through these issues collaboratively.

in addition to the above upcoming work, over the past year (and continuing forward), the Parties met weekly, PPB fielded hundreds of inquiries each year and compiled quarterly documentation of its efforts, and the DOJ's production request for this assessment yielded a production of 3,231 files totaling 653 gigabytes of information. At the DOJ's suggestion, the City in February 2022 implemented a request tracker updated bi-weekly to clarify and document outstanding requests for information. These systems reflect the collaborative efforts of the parties, and the City is committed to building on those efforts.

D. Charting the Path Forward.

The Parties continue to discuss the many possible paths to achieving their shared goals, including the possibility of an independent monitor. As the Parties explore these options, the City believes the City and DOJ might benefit from informal early facilitation sessions, which might provide an opportunity for the City and DOJ to resolve issues and achieve mutual clarity with the help of a facilitator, before resorting to the formal dispute resolution procedures set forth in the Settlement Agreement. The City believes this may further assist the parties in the effort to collaborate toward their mutual goals.

The City appreciates the forward-looking approach of COCL and DOJ, which recognizes

the City's accomplishments and progress along with the ongoing opportunities for improvement. The City hopes to build on that constructive approach and improve its ability to collaborate toward our mutual goals. The City is committed to achieving substantial compliance, delivering enduring police reform, and restoring oversight and direction of our Police Bureau to our local community and its elected leaders. The City believes the DOJ shares these goals and the City remains open to the many different paths to achieve those goals.

Dated: July 20, 2022

Respectfully submitted,

/s/ Robert Taylor

ROBERT TAYLOR, OSB #044287
City Attorney
Robert.Taylor@portlandoregon.gov

/s/ Heidi Brown

HEIDI BROWN, OSB #922410
Chief Deputy City Attorney
Heidi.Brown@portlandoregon.gov

/s/ Sarah C. Ames

SARAH C. AMES, OSB #163350
Deputy City Attorney
Sarah.Ames@portlandoregon.gov

/s/ SreeVamshi C. Reddy

SREEVAMSHI C. REDDY, OSB #140560
Deputy City Attorney
Vamshi.Reddy@portlandoregon.gov